

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DOC #:
DATE FILED: 11/14/2019

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NIKOLA HAMILTON, <i>individually and on behalf of others similarly situated</i> ;	:	
	:	
Plaintiff,	:	19-CV-9311 (VEC)
	:	
-against-	:	<u>ORDER</u>
	:	
TALIA'S RESTAURANT GROUP, LLC, <i>DOING BUSINESS AS TALIA'S STEAKHOUSE</i> ;	:	
EPHRAIM NAGAR;	:	
	:	
Defendants.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS on November 14, 2019, Plaintiff filed a notice of dismissal without prejudice pursuant to Rule 41 against all defendants, Dkt. 6 and

WHEREAS the Second Circuit has left open for future decision whether an FLSA case may be settled without Court or DOL approval and dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), *see id.* at 201 n.2 (“[W]e leave for another day the question of whether parties may settle [FLSA] cases without court approval . . . by entering into a Rule 41(a)(1)(A) stipulation without prejudice.”);

IT IS HEREBY ORDERED that by **November 22, 2019**, Plaintiff’s counsel must file an affirmation (1) stating that the Plaintiff has been clearly advised that the settlement of this case does not preclude him from filing another lawsuit against the same Defendants and (2) affirming that there is no settlement agreement between the parties that contains a release of the Defendants from liability. *See, e.g., Elfenbein v. Gulf & W. Indus., Inc.*, 590 F.2d 445, 449 (2d Cir. 1978) (*per curiam*) (“[A] dismissal without prejudice permits a new action (assuming the

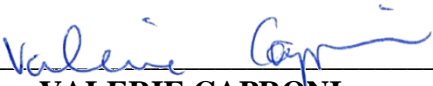
statute of limitations has not run) without regard to Res judicata principles.” (quoting *Rinieri v. News Syndicate Co.*, 395 F.2d 818, 821 (2d Cir. 1967))). The parties are warned that this form of resolution runs the risk that the case may be reopened in the future.

IT IS FURTHER ORDERED that, if a settlement agreement releasing Defendants from liability has been reached, then the parties must submit that proposed settlement to the Court, along with a letter seeking approval of the settlement, no later than **November 22, 2019**.

If no letter or stipulation is filed by **November 22, 2019**, a conference shall be held on **December 6, 2019, at 10:00 a.m.** in Courtroom 443 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York 10007.

SO ORDERED.

Date: November 14, 2019
New York, NY



VALERIE CAPRONI
United States District Judge